

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

OLGA PALOMINO, R. J. KHATRY,
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Plaintiffs,
v.
WELLS FARGO BANK, N.A., U.S.
BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR CITIGROUP
MORTGAGE LOAN TRUST 2007-
WFHE3, ASSET-BACKED PASS-
THROUGH CERTIFICATES, SERIES
2007-WFHE3,
Defendants.
CIVIL ACTION NO. 6:15-CV-00375-RWS-
KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Before the Court is the Report and Recommendation of the Magistrate Judge (Docket No. 39), which contains her findings, conclusions and recommendation for the disposition of Defendants' Motion to Dismiss for Failure to State a Claim (Docket No. 19). The Report and Recommendation, filed on February 17, 2017, recommends that the Motion be granted. Docket No. 39 at 11. No written objections have been filed.

In the Report and Recommendation, the Magistrate Judge considered whether Plaintiffs' Complaint states a claim for any of four causes of action Plaintiffs put forward. She found that Plaintiffs do not state a claim for violation of Section 51.002 of the Texas Property Code because the latter does not provide a private right of action. Docket No. 39 at 4-5. Magistrate Judge Mitchell further found that Plaintiffs do not state a claim for wrongful foreclosure because the alleged procedural defect in the foreclosure sale is not legally cognizable, the Complaint contains no allegation that the sale price was grossly inadequate or

that the procedural defect caused the grossly inadequate sale price, and Plaintiffs have not tendered the full amount due under the note. *Id.* at 5–9. The Magistrate Judge also found that Plaintiffs had not stated a claim for trespass to try title or a quiet title claim because the Complaint contains no allegations regarding the superiority of Plaintiffs’ title. *Id.* at 9. Finally, the Magistrate Judge recommends granting Plaintiffs leave to amend their Complaint. *Id.* at 10–11

The Court has reviewed the Report and Recommendation of the Magistrate Judge and found no error. The Court therefore **ADOPTS** the findings and conclusions of the Magistrate Judge as those of the Court. In light of the foregoing, it is

ORDERED that Defendants’ Motion to Dismiss for Failure to State a Claim (Docket No. 19) is **GRANTED** and Plaintiffs’ claims against Defendants are **DISMISSED WITHOUT PREJUDICE**. It is further

ORDERED that if Plaintiffs fail to amend their complaint **within fourteen days** from the date of issuance of this Order, at the re-urging of Defendants, Plaintiffs’ claims will be dismissed with prejudice and this case, closed.

SIGNED this 14th day of March, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE